

Previous references

1923.
Court

File No. 163-23

Serial Nos 1-2

Later references

P

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for June 1924.

SUBJECT

memorial of one Gurappa, praying that the
sentence of death passed on him may be commuted
to one of transportation for life.

no. 6828 of 12-6-24

To the Right Chief Clerk

Forwards copy of order passed by the
Maharaja commuting the sentence of death passed
on the convict into one of transportation for life.

Mamaswamy Iyer
21/7/24

GENERAL AND REVENUE SECRETARIAT.

65

NOTES

File No. 163-2

FILE HEADING

Memorial of Gurappa accused and sentenced to death in
 deliberative session case no. 49234 on the file of the Secy.
 Judge Shumoga Sh and confirmed by in CR App no. 46923.
 Rep'd case no. 29254 on the file of the Chief Court

From

The Registrar. Chief Court

No. 433/CR

Dated 24-12-23
63-1-24

Received 6.1.24

Diary No. 2860

Enclos.

466

2 vol

Spare Copies.

Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forward the memorial of Gurappa praying that
 the sentence of death passed on him be commuted
 to one of imprisonment for a short term.

NOTES AND ORDERS.

Hand
 31.1.24

File No. 163

of 1924

Serial
No.

(1) The memorialist has been convicted by the Sessions Judge, Shimoga for the murder of his wife and sentenced to death. The conviction and the sentence, have been confirmed by the Chief Court. The facts of the case are not disputed, but the plea put forward is that the case amounts to only causing hurt with dangerous weapons, and not to murder, and that a short term of sentence ought to satisfy the ends of justice. It is prayed that the sentence of death passed on the accused, may be commuted to that of a short term of imprisonment.

(2) The accused is over 50 years of age and is addicted to the use of ganja and bhang. It is in evidence that from the time he took to ganja, he has given up work, grown his hair & beard, and has his irrational moments. He used to pester his wife for money to buy the abnoxious drug and when refused, to ill treat her.

Serial
No.

(3) On the day of the occurrence, he was refused money, and sat brooding over it in the house. Later, when the deceased started for work, he followed her, and then all of a sudden attacked her with a Sickle, causing serious injuries to which the deceased ~~succumbed~~ succumbed after 30 days. The Charge was first for grievous hurt and if the woman had not died, there was no trouble. After her death, the Charge was changed to that of murder, and the accused convicted for it.

(4) The only points for discussion in the Courts were whether the accused should be convicted for murder or for a lesser offence, and whether there were any extenuating circumstances to avert the Capital sentence now passed on him. The Sessions Judge and the Chief Court have carefully gone into the question, and think that nothing short of a Capital sentence will meet the ends of justice in a case

Serial
No.

when he has opportunities of doing the thing in the house itself and cover. If he did intend killing his wife the third assessor considered that offence did not fall under Sec 302 (murder) but only under 304. If legal acumen is kept aside, this is about the view that will be taken by a layman. The accused is over 50 years old, and age — both tender & old age — is often taken into consideration when awarding punishment. There is also the fact that the deceased survived for 30 days after the injuries, leading to the inference that the injuries were not such as are ordinarily considered fatal, though eventually one of the injuries did prove fatal. Medical opinion has also suggested that there was a possibility of blood poisoning, as the cut had been stuffed with cow-dung and some such material which may bring on blood poisoning. As a matter of fact an intestine had been perforated and there was a collection of pus in the cavity of the stomach, and death was

Serial
No.

Probably due to Peritonitis

(b) It is the brutal nature of the attack on an innocent victim of no valid cause, that has led to the sentence. Whether the accused deliberately intended to kill his wife is doubtful, it is more the result than the intent that counts in such cases. One may deliberately intend to kill another and fire at him, but miss a vital part. The offence will not be murder. The injury in this case was not such as to cause immediate death or death in a short time as events have proved. His habitual use of the drug, the circumstances in which he attacked his wife, and his attitude at the trial seem to indicate that he was not quite himself — sometimes at least; and the particular time when he committed the crime may have been a period when he was ~~was~~ partially deranged. Taking his age, and the other circumstances together, the sentence of death may perhaps be commuted into one of transportation for life. He is almost nearing his span of life; and is not

2860
P. 8 8

Serial
No.

9381
7.5.24

The petition may perhaps
be rejected.

(1) Member

88

24/4
1574

(2) Having viewed the fact that he
accused is admitted to the use of force
& force, that in his day 2 months, he
had not had a supply of his drug which
might have caused a little abnormal
2 mind though not sufficient in law
to make him not responsible for his
crime, that he was no other motive
for his crime, & that his woman & his
wife lived for 30 days after. ^{his} ~~he~~
witness were ~~unreliable~~ ^{unreliable}
and he decided upon 2 his account.
his sentence & death may be com-
muted into one of hard labour
for life.

14/5

Jagjee

Dewan

May be of fine

Circular

1575

Ch. Jayanti
Cmptd

105 Jagjee
1575

NOTE—Contn. sheet

circulate
m5

Received
DEPARTMENT OF
15 MAY 1924
No. 8318

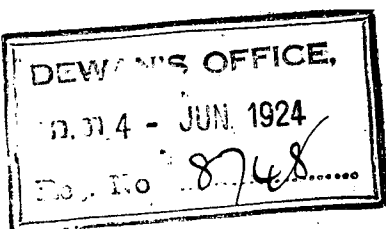
(For Disposal by Circulation.)

No. C. 459

1923-24

GENERAL AND REVENUE SECRETARIAT.

Council Matter.



SUBJECT.

Commutation of the sentence of death passed on G. Appa
a convict in the Bangalore Central Jail, into one of trans-
portation of life.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

22nd May 1924.

Chief Secretary to Government.

Extraordinary Member of Council.

1862/27/5 First Member of Council.

Prin. Secy
revised
27/5

595/26.5 Second Member of Council.

Third Member of Council.

9953/27/5 Subd to I Member for final note.

Final note signed by the I. Member.
is placed in the file
S. N. Submitted
16/6

Submitted to His Highness.

I submit herewith a Final Note by the....FIRST....

*Member of Council on the subject of....commutation...of the
sentence of death passed on Gurappa, a convict in the
Bangalore Central Jail, into one of transportation for life
for His Highness' gracious approval.*

Dewan:

5 JUN 1924

Final Note by the First Member of Council.

Subject:—

Commutation of the sentence of death passed on Gurappa, a convict in the Bangalore Central Jail, into one of transportation for life.

The memorialist Gurappa was tried on a charge of having murdered his wife and was convicted and sentenced to death by the Sessions Judge Shimoga Division. The conviction and sentence having been confirmed by the Chief Court on appeal, Gurappa has memorialised for mercy and pleaded that his offence amounts only to causing hurt with dangerous weapon and not to murder and that a short term of imprisonment ought to satisfy the ends of justice.

The accused is over 50 years of age. The case against him that having been addicted to ganja for several years, he used to quarrel constantly with his wife for not furnishing him with cash to purchase the stuff, and that owing to such an incident on the morning of the occurrence, he attacked her with a sickle when the two with another were going from the village to sow paddy in the accused's land. Serious injuries were caused by the sickle resulting in the death of the woman after 30 days. The charge was first for grievous hurt and after the woman's death, it was changed to that of murder.

When the papers were submitted to me, I recorded the following

age & of office minute:—
Notes

"Having regard to the fact that the accused is addicted to the use of bhang and ganja, that on the day of murder, he had not had a supply of the drug which might have caused a little aberration of mind though not sufficient in law to make him not responsible for the crime that there was no other motive for the crime and that the woman—his wife lived for 30 days after the injuries were inflicted and the divided opinion of the assessors, the sentence of death may be commuted into one

f transportation for life."

The Dewan and the Second Member have agreed with me.

The proposal to commute the sentence of death to one of transportation for life may be graciously approved.

Bangalore,
2nd June 1924.

W. H. M. S. M.
MEMBER OF COUNCIL.

VB 3459

Record of Cases submitted for the Orders
of His Highness the Maharaja



Subject.

Commutation of the sentence of
death passed on Gurappa into one of
transportation for life.

925

Order.

~~KRUH~~

6/6/24

Secy. to Govt.

W.D.

7 JUN 1924

7/6

Commutation of the Sentence
of Death passed on Gurrappa,
Convict in the Bangalore Central
Jail, into one of transportation
for life.

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to the Members of Council for perusal of

His Highness' orders ^{before}_{after} issue of orders. (Vide Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

bea...

Chief Secretary to Govt.

Through the Secretary to Government.

...*K. and S.*... Departments.

8-4-6

FIRST MEMBER OF COUNCIL.

SECOND MEMBER OF COUNCIL.

THIRD MEMBER OF COUNCIL.

2862 M

R. S. III-2]

General and Revenue
Secretariat.

File No.

of 19

Serial
No.

DEV 30
REC'D, 349 - JUN-1924
Reg. No. 8936

The usual amorphous order
commuting the sentence of death
in the pub. up. cas
7.6.24

Draft subd, and with a fair
copy for forwarding to Dewan's
signature.

~~ccy~~ sub Dewan) cas
7.6.
7.6.24

8/10/6 Issue
cas
10/6

2 To the Registrar, Chief Court.

No. P. 6828 dt 12.16.24

For copy of H. H. order commuting the
sentence of death passed on Kurappa
into one of transportation for life for
communication to the prisoners.

B
20/6

N^o. 433
En.

21471

2860

Bangalore,

Enc:- Memorial, (Recons in Cr. App. No. 46 of
23-24 (2 files) + Recons in ^{Ref. No. 2 of} Chitaldrug
Sessions Case No. 4 of 23-24 (4 files))

Dated 24th Decr. 1923
3rd. Jan'y: 1924.

*. Separately sent.

From

THE REGISTRAR OF THE
CHIEF COURT OF MYSORE.

do 163-23-1
cur
S-1



To
Chief
THE SECRETARY TO GOVERNMENT,
~~GENERAL AND REVENUE DEPARTMENTS.~~
Bangalore.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja
by... *Gurappa* ...accused in... *Chitaldrug* ...Sessions Case No.
4 ...of 1923-24...on the file of the Sessions Judge of... *Shimoga* .
Division, and appellant in Criminal Appeal No. *46* of 1923-24...on the file
of this Court. *Cr. Refused Case No: 2 of 1923-24*

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Theemsa Rao
3/1/24
Registrar.

G. S. N. I.

CHIEF COURT OF MYSORE.
24 DEC 1923

Before the Government of Mysore
At Bangalore

Petitioner

Gurappa, condemned prisoner in the
Central Jail Bangalore.

under SS 401 & 402 Cr. Pro. code, The
petitioner above named begs to state
as follows:—

1. The petitioner was convicted
by the Sessions Judge Shimoga in
Chitaldurg Sessions Case No. 4 of
1923-24 for the murder of his wife
Siddalingamma and the same was
confirmed by the Chief Court of Mysore
in Cr. Ap. No. 46 of 1923-24. The sentence
in Cr. Ref. Case No. 2 of 1923-24
of death passed by the Sessions Judge
was also confirmed by the Chief Court.

2. The petitioner is 52 years old
and a father of 10 children. He and
the deceased wife were on good terms.

The prosecution evidence clearly shows beyond doubt that the accused never intended to cause death of her wife. His intention was to chastise her and it was a pure accident that the cut caused her death indirectly. This is evident from the fact that the 2nd and the 3rd blows were not half so serious ~~and~~ as the first and had healed before the death. But for the accidental hit in the first instance, there is no room to think, that the act of the accused amounted to nothing but an offence under S. 323 of I.P.C.

3. The deceased lived for full one month after the assault. She was in the hospital for one month and she died of blood poison. Pw, Mr. M. Kazim, M.O. clearly says "The woman died of Septaemia which means blood-poisoning due to absorption of pus and poison formed in the wounds. If there was no blood poison and no other complication had supervened, the woman might have lived. In

this case there was only blood poison and no other complication. Blood poison arose as the wound was septic and there was discharge of pus. When the patient was brought to the Hospital, the wounds were in a highly infected condition, owing to various materials and caustics applied already in the village. Cowdung and sand and earth might cause infection."

Pw₂ Mr. N. Krishna Sreenivas Rao Sub. Asst. Surgeon

Surgeon says "On the first day i.e. on 18-6-23, I saw that Cowdung and Jaggery had been applied to the wound and a cloth bandage ~~was~~ put on it. Cow-dung may bring on blood-poison."

The woman died on 17-7-1923.

From the above it is clear that the death was due to the supervening blood-poison and not directly due to the hurt caused by the accused.

4. The accused did not know what he was doing nor was he fully aware of the seriousness of his act when he struck his wife as

his mind was not in sound state and had become almost insane, he having contracted the bad habit of ganja smoking. Pw₄ Siddalingappa p.14. at p.14 says "The accused has been

smoking bhang since 7 or 8 years. Yes, owing to this addiction sometimes he loses control over his temper, but at other times he will be alright like us all " Pw₆ Kariappa says and hairs to grow " Pw₆ Kariappa says p.15

"The accused and his wife used to be constantly quarrelling. I mean the accused used to abuse his wife very frequently. I was questioning both; accused's wife was saying to me that the accused was abusing her as she had no money to give him to buy Pw₄ A. S. S. The accused smokes bhang since 3 or 4 yrs and therefore he was abusing his wife. ----- Before 3 years the accused was managing his household. Since 3 years, his wife was managing it.

Pw₁₀ Maheswarappa says "The accused is my father and the deceased is my mother. p.18. My mother had 10 children of whom 6 are now alive. He is not attending to cultivation of our lands. My father always carries a sickle in his hand when going to the field; He used to ask my mother for money to

purchase unang, & she refused
he was abusing and beating her. At
times he would take away grains and
other provisions sell them and buy
ganga. My father had no money. As my
mother was managing the household
she used to keep some money.
My father was following my mother where
she went as a habit. ... He was particu-
larly cruel to my mother; it may be because
he is addicted to bhanga, but my mother
was not an immoral woman.
The deceased Siddalingappa in his dying
declaration says " Since 2-3 years
my husband has no sufficient contr-
ol over his temper. Being addicted to ganga
he is wandering and does no work. He has
allowed his beard and hair on his head
to grow. I have been attending to the
cultivation operations with the help of
my son and a servant. On Sunday
morning, myself and my brother-in-
law Giriyamma started to our fields in order
to sow paddy seeds; my husband followed
me. We went near a halla or water-
course. He had a sickle in his hand
and struck me on the right abdomen
saying that I did not comply with
his demand for money. [Signature]

in putting questions "in the lower court my father
Pw₁₀ says "I was not keeping my mother."
asked me if "I was not keeping my mother."
"I accused him" yes, in the

addition
same and rational).

5. The assessors say as follow:-

2. Mr. Sanna Yellappa.
Accused is guilty under S. 326

2. Mr. Sarina Yellappa.

Anna Jemappa.
Accused is guilty under S. 326

of D.P.C. He was not in proper senses and temper owing to gaya habit. If not he would have killed his wife in the house itself where she refused him money. He would not have killed her in the open space at the field.

3rd Assessor Mr Phaniyappa

I think the accused is guilty under S. 304 D.P.C. and not under S. 302.

6 From the above it is quite clear that the accused neither intended to cause death nor knew that he was causing death or likely to cause death of his wife when he assaulted her. His act cannot amount to an offence under S. 302 of D.P.C. It would be an offence under S. 326 of D.P.C. and an imprisonment of a term of 2 or 3 years would have met the ends of justice in the circumstances of the case. Even if he be guilty of an offence under S. 304 of D.P.C. an imprisonment for a short ~~term~~ ^{term} would have been the proper punishment in the case.

7. The petitioner humbly submits that the Courts have taken a narrow

view if not a too technical view of the case. There is no room whatsoever for either passing or confirming the sentence of death in the circumstance of the present case. No consideration is given to the old age and the state of the mind which ~~was~~ ^{had become abnormal} ~~depressed~~ and had become partially insane, in awarding the sentence.

The petitioner therefore humbly prays that begrin Government may be pleased to commute the sentence of death into an imprisonment for a short time ~~or~~ ~~which~~ ~~will~~ ~~be~~ ~~in~~ ~~the~~ ~~interest~~ ~~of~~ ~~the~~ ~~public~~ ~~and~~ ~~the~~ ~~ends~~ ~~of~~ ~~justice~~ ~~in~~ ~~the~~ ~~peculiar~~ ~~circumstances~~ ~~of~~ ~~the~~ ~~present~~ ~~case~~.

"Countersigned" x

M. A. Chatterjee
Superintendent
B.B. & C. Co.

२३/११/२३ पं० १००१

Signed before me
M. A. Chatterjee
Chief Justice

24/11/23

800
75

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 17th day of December 1923.

Present.

Mr. Justice R. B. Plumer,

and

Mr. Justice B. Subbanna.

PETITION OF CRIMINAL APPEAL

No. 46 of 1923-24

Criminal Referred Case No. 2 of
1923-24

APPELLANT

Gurappa

against the conviction and sentence
by the Sessions Judge of Shimoga Di-
vision, under section 302 of the
Indian Penal Code, in Chitaldrug
Sessions Case No. 4 of 1923-24.

(Accused)

J U D G M E N T.

The appellant has been found guilty by the
Sessions Judge, Shimoga, of the deliberate murder of his
wife and has been sentenced to death.

Appellant's counsel concedes that there are no
grounds on which the appeal against the conviction can
be supported. He asks us to find the mental state of
the accused due to his habitual use of bhang an
extenuating circumstance sufficient to justify a

reducing the capital sentence to one of transportation for life.

The facts of the case briefly are that about 9 A.M. on the 17th June 1923 the accused and his wife with his son, prosecution witness No. 10, and his sister-in-law, prosecution witness No. 3, after taking early morning meals were on their way together at about 9 A.M. from their house to the fields. As they approached the fields the deceased sent her son to the house of his sister the wife of prosecution witness No. 4 to fetch til seeds for sowing. The other three continued on their way walking in Indian file with the deceased woman leading followed by her husband. Prosecution witness No. 3 brought up the rear. Suddenly the accused who was carrying a sickle in his hand struck his wife on the right side with it. She fell down. Prosecution witness No. 3 raised an alarm and prosecution witnesses Nos. 4, 9 and 10 ran up hearing her cries. Meanwhile accused struck his wife several more blows on the head and body with the cutting edge of the sickle.

The wound on the woman's flank fractured the 9th and 10th ribs and perforated the intestine and the wound on the head fractured the skull. The woman however survived 30 days before she finally succumbed.

The accused seeing men running to the spot ran off and evaded arrest till the 11th July.

The injured woman's dying statement was recorded by the Jemadar on the 18th June and again by the Treasury Assistant Commissioner and First Class Magistrate. These are Exhibits P₅ and P₆. In them she states that being

addicted

addicted to ganja her husband was wandering about and doing no work for the past two or three years and had not sufficient control of his temper. On the 17th he was angry with her because she would not give him money to buy ganja. When they left their house he walked behind her in silence and then suddenly struck her with the sickle on the side and the nature of the injuries shows clearly how savage the blow must have been. From the evidence of prosecution witnesses No. 10 and prosecution witnesses Nos. 3 and 4 it is clear that the accused though quarrelsome and cruel at home was behaving quite rationally towards all others in his villa and this is corroborated by the evidence of the patel, prosecution witness No. 6. He took his morning meal properly on the day of the murder and that morning his son, prosecution witness No. 10, did not see him smoking bhang.

In these circumstances it is clear that the accused's habit of taking bhang had not caused such mental derangement as to incapacitate the accused from knowing the nature of his acts. It had merely caused him to lose control of his savage instincts and to indulge a lawless impulse with a brutal violence and reckless disregard of the consequences.

In an exactly similar case reported in Indian Law Reports XIV Bombay 564 where the accused's "confirmed habit of smoking ganja had made him unwilling to work and had induced a state of mental irritability which had rendered him incapable of resisting the temptation to resent with brutal violence the slightest disrespect or opposition to his wishes" it was held by three learned Judges of the High Court that there was

26
no justification for commutation of the sentence.

This was also the view of Stanyon and Batten, Acting Judicial Commissioners in two very similar cases in the Court of the Nagpur Judicial Commissioner.

There is no doubt authority that where the accused is suffering partial mental derangement as the result of habitual taking of bhang that is a circumstance justifying the lesser sentence (4 Criminal Law Journal 86) and there is authority that where the act is unpremeditated and done while in an actual state of intoxication those facts will be taken into consideration when awarding sentence, (17 Mysore Law Reports 62 at page 72) and may be permitted to avert the capital sentence (1 Criminal Law Journal 495 and 18 Indian Cases 675) and we entirely agree with the views of the learned Judges in those several cases that so far as the circumstances of those several cases went the ends of justice did not require the passing of the extreme sentence. But we also agree with the opinions expressed in the cases from Nagpur and Bombay referred to above that there must be actual mental derangement and not merely a weakened loss of control due to vicious habit. The latter is the present case in which the facts are almost identical with the case in XIV Bombay 564.

In both cases the accused's state of mind so far as it ~~was~~ was altered at all from its normal state was due to his own vicious habit. The act of the accused in each case was a brutal and vindictive one done to avenge a fancied slight and in this case the act was not even done as ~~the~~ in the Bombay case in the course of a quarrel. It was done as the result apparently of a sullen brooding over his wife's reasonable and prudent conduct in not supplying the
accused

accused with the money to enable him to buy bhang and to satisfy his vice.

We are unable therefore to find any circumstance to justify us in reducing the sentence.

We accordingly dismiss the appeal and confirm the sentence of death passed upon the accused Gurappa.

(Signed) R. B. Turner

JUDGE.

(Signed) B. Subbanna

JUDGE.

Copy

M. V. S. S. S. S. S.

By: Registrar

H

DRAFT.

SUBJECT

Section. *CR*File No. *163-23*Serial No. *2*No. *16828*

Diary No. of letter replied to.....

To

*Records**The Registrar of the Chief
Court of Mysore.*

GENERAL AND REVENUE SECRETARIAT,

SIR,

, the.....191

Date of issue.....

12/6/24

Signed by.....

W. C. A. G.

I am directed to forward herewith
for information of the Judges of the Chief
Court and for communication to the
prisoner.....*Gunappa*

undergoing sentence of.....*death*in the.....*R.C.* Jail,

copy of order passed by H. H. the Maha-

raja of Mysore, on the prisoner's memorial

*praying for commutation
death sentence into one transportation
for life*

2. The entire records received with
your letter No. *433/CR.* dated

24.12.23
3.1.24.....191 are
herewith returned.

I have, etc.,

caz
*76**Secretary. b fol*
*2 12 Sept 24**cauz ltr*
7.6.24

In the Matter of a Memorial
praying for commutation of the sentence
of death passed on Gurappa, a convict in
the Bangalore Central Jail into one of
transportation for life.

His Highness the Maharaja

has been pleased to
commute the sentence of death
passed on Gurappa into one of
transportation for life